

Update: Child Protective Proceedings Benchbook (Revised Edition)

CHAPTER 2

Reporting & Investigating Suspected Child Abuse & Neglect

2.7 Investigation and Referral Requirements

Insert the following text at the top of page 30, immediately after the first paragraph:

When the FIA interviews a person concerning alleged abuse or neglect, the FIA is required to provide that person with specific information. MCL 722.628(2),* in relevant part, states:

“In the course of an investigation, at the time that a department investigator contacts an individual about whom a report has been made under this act or contacts an individual responsible for the health or welfare of a child about whom a report has been made under this act, the department investigator shall advise that individual of the department investigator’s name, whom the department investigator represents, and the specific complaints or allegations made against the individual. The department shall ensure that its policies, procedures, and administrative rules ensure compliance with the provisions of this act.”

*Effective July 8, 2004. See 2004 PA 195.

CHAPTER 2

Reporting & Investigating Suspected Child Abuse & Neglect

2.15 Constitutional Requirements for Reporting and Investigating Suspected Child Abuse or Neglect

B. Investigating Suspected Child Abuse or Neglect

Near the top of page 38 before the paragraph beginning “*Miranda warnings*, ” insert the following text:

MCL 722.628(17)* requires that all FIA employees involved in investigating child abuse or neglect cases be trained in “the legal duties to protect the state and federal constitutional and statutory rights of children and families from the initial contact of an investigation through the time services are provided.”

*Effective July 8, 2004, 2004 PA 195.

CHAPTER 11

Common Evidentiary Issues in Child Protective Proceedings

11.11 Expert Testimony in Child Protective Proceedings

Insert the following text near the middle of page 290, before the paragraph beginning “MRE 703”:

The Michigan Supreme Court in *Gilbert v DaimlerChrysler Corp*, ___ Mich ___, ___ (2004), reiterated the trial court’s gatekeeper responsibility in the admission of expert testimony under amended MRE 702. The Court stated:

“MRE 702 has [] been amended explicitly to incorporate *Daubert*’s* standards of reliability. But this modification of MRE 702 changes only the factors that a court may consider in determining whether expert opinion evidence is admissible. It has not altered the court’s fundamental duty of ensuring that *all* expert opinion testimony—regardless of whether the testimony is based on ‘novel’⁵² science—is reliable.

**Daubert v Merrell Dow Pharmaceuticals, Inc*, 509 US 579 (1993).

⁵² See, e.g., *People v Young*, 418 Mich 1, 24; 340 NW2d 805 (1983). Because the court’s gatekeeper role is mandated by MRE 702, rather than *Davis-Frye*, the question whether *Davis-Frye* is applicable to evidence that is not ‘novel’ has no bearing on whether the court’s gatekeeper responsibilities extend to such evidence. These responsibilities are mandated by MRE 702 irrespective of whether proffered evidence is ‘novel.’ . . .”

Gilbert, supra at ____.

The Court also indicated that the trial court must focus its MRE 702 inquiry on the data underlying the expert opinion and must evaluate the extent to which the expert extrapolates from that data in a manner consistent with *Daubert v Merrell Dow Pharmaceuticals, Inc*, 509 US 579 (1993). *Gilbert, supra* at ____.

CHAPTER 14

Paying the Costs of Child Protective Proceedings

14.1 Federal, State, and County Sources of Funding

Federal foster care maintenance payments under Title IV-E.

Insert the following text near the middle of page 333 before the boldface text beginning “**Except as otherwise provided by law . . .**”:

*See 2004 PA
193.

Effective July 8, 2004, MCL 400.115b* was amended to provide that if the FIA is making state or federally funded foster care maintenance payments for a child that is either under the supervision of the FIA or has been committed to the FIA, all rights to current, past due, and future child support are assigned to the FIA while the child is receiving or benefiting from those payments. MCL 400.115b(5)–(6) state:

“(5) All rights to current, past due, and future support payable on behalf of a child committed to or under the supervision of the [FIA] and for whom the [FIA] is making state or federally funded foster care maintenance payments are assigned to the [FIA] while the child is receiving or benefiting from those payments. When the [FIA] ceases making foster care maintenance payments for the child, both of the following apply:

“(a) Past due support that accrued under the assignment remains assigned to the [FIA].

“(b) The assignment of current and future support rights to the [FIA] ceases.

“(6) The maximum amount of support the [FIA] may retain to reimburse the state, the federal government, or both for the cost of care shall not exceed the amount of foster care maintenance payments made from state or federal money, or both.”